

Part 14 Liquidation**355 Liquidation Process (7 CFR 762.149)**

A**Liquidation
Process
Overview**

After a lender has determined that a borrower's financial difficulties cannot be solved with any 1 or combination of the loan restructuring options, the lender must liquidate the loan. All lenders are expected to proceed with liquidation in the following chronological order.

- Ⓒ The lender must give the borrower notice that the loan will be liquidated.
- Ⓒ The lender must accelerate the note.
- Ⓒ The lender must prepare a liquidation plan. SEL and CLP lenders will provide FSA with a copy.
- Ⓒ The lender must submit an estimated loss claim with the liquidation plan if liquidation is expected to exceed 90 calendar days.
- Ⓒ The lender must liquidate the security.
- Ⓒ The lender must submit a final loss claim.
- Ⓒ The lender must remit future recoveries to FSA in proportion to the percentage of the guarantee.

Liquidation steps (maximum timeframes) are summarized as follows.

All dates measured in days after payment due date unless otherwise noted	
60 Days*	Earliest Date that Lender Can File to Liquidate Security
90 Days	Lender Gives Notice to Borrower and Accelerates the Loan or Implements a Loan Restructuring Plan
120 Days	Lender must reach decision as to whether the account will be restructured or liquidated.
150 Days	Liquidation plan and estimated loss claim must be submitted.
164 Days	Estimated protective advances must be concurred with by FSA.
170 Days	Liquidation plan must be approved by FSA.
180 Days	Estimated loss claim must be approved by FSA.
260 Days	Liquidation completed.
290 Days	Final loss claim submitted.
*--330 Days**	FSA should approve or request modification of final loss claim.
* 60 days after disposition of IA eligibility issue (see paragraph 300)	
** 40 days after submission of final loss claim (see subparagraph 360 E)--*	

Continued on the next page

B**Earliest Date the Lender Can File to Liquidate Security**

The lender may not initiate foreclosure action on the loan until 60 calendar days after eligibility of the borrower to participate in the IA Program has been established by FSA. The lender and borrower must discuss IA Program eligibility at the default meeting. See paragraph 300 for more information on this meeting. If IA eligibility was waived in writing by the borrower, the lender may prepare to liquidate the loan immediately following receipt of the waiver.

It is the lender's prerogative to request IA on a loan, regardless of the borrower's desire or eligibility for the subsidy. However, it must be considered and documented in some fashion that it was rejected as an option. The Authorized Agency Official shall remind the lender of this requirement if they attend the post default lender borrower meeting. Following this meeting or receipt of FSA-1980-44, the Authorized Agency Official shall make a written entry in the running record of the borrower's FSA file as to the date that IA was considered and when the 60-calendar-day abeyance period ends.

C**FSA-1980-44 Is Submitted**

FSA-1980-44 must be submitted following the lender-borrower default meeting and every 60 calendar days thereafter. The original report will notify FSA that the borrower is in default. Subsequent FSA-1980-44 reports will comment on the progress of liquidation and identify any problems the lender is having or may have in completing the liquidation in a timely manner.

If FSA-1980-44 is not received as required, the Authorized Agency Official shall contact the lender, inquire as to the status of the account and request that an accurate report be provided. If necessary, this contact should be followed up with a letter, and if the Authorized Agency Official feels it is necessary, a copy provided to SED. Interest that accrues during unnecessary delays will not be paid as part of a loss claim. SED and DD shall monitor guaranteed loan delinquency reports to ensure that liquidating accounts are being monitored and reports are being filed timely.

Continued on the next page

355 Liquidation Process (7 CFR 762.149) (Continued)

D**Decision to Liquidate Must Be Reached or a Loan Restructuring Plan Must Be Implemented**

Sometime between the date that the borrower's payment was due but not paid and 45 calendar days thereafter, the lender is expected to notify the borrower of the default and meet with the borrower to discuss solutions. Within 75 calendar days of this meeting (or unsuccessful attempts to meet) the account should be paid current or restructured. If a solution that requires more than 75 calendar days (90 calendar days after default) is agreed to, the reasons should be indicated on FSA-1980-44. The Authorized Agency Official shall review FSA-1980-44 and depending on what the lender's plans are, concur with the lender's plan, request a restructuring plan, request a liquidation plan, or mark the file for a follow up action as of the date the account is supposed to be paid current.

E**Liquidation Plan and Estimated Loss Claim Must Be Submitted**

Within 30 days of the decision to liquidate, standard eligible and CLP lenders will submit a written liquidation plan to the Agency (see paragraph 358). An estimated loss claim will be submitted by the lender with the liquidation plan if the liquidation is expected to exceed 90 days (see paragraph 359). PLP lenders will submit a liquidation plan if it is required by their Lender's Agreement.

If the liquidation is expected to be completed within 90 calendar days of the decision to liquidate, the submission of an estimated loss claim is not necessary.

The Authorized Agency Official shall review the lender's estimates of time frames and, based on their knowledge of the case and similar cases in their area, advise the lender of any concerns. If the lender estimates that liquidation will take less than 90 calendar days, FSA shall pay no more than 90 calendar days of interest on the final loss. Also, if liquidation is expected to take longer than 90 calendar days and the lender estimates that there will be no loss on the loan after considering the net recovery value of the security, the lender will either discontinue interest on the loan as of 90 calendar days after the decision to liquidate, or submit an estimated *--loss of \$0. If liquidation is expected to exceed 90 calendar days and a loss is expected, the lender must submit an estimated loss claim. The lender will discontinue interest accrual on the defaulted loan at the time the estimated loss claim is paid by FSA. See subparagraph 359 A. If the lender fails to report--* default on a guaranteed loan to FSA or otherwise comply with the requirements of this part, FSA shall pay interest that accrues only up to 90 calendar days after default as part of a final loss claim.

Continued on the next page

355 Liquidation Process (7 CFR 762.149) (Continued)

F**Liquidation Plan Is Approved or Rejected by FSA**

When the decision has been made to liquidate, a liquidation plan is required to be submitted by a CLP lender or SEL in all cases, including where all of the security has been sold, the borrower is liquidating voluntarily, or when no loss is expected. FSA shall review a lender's liquidation plan and either approve it or request modifications within 20 calendar days after it is received. See subparagraph 358 F.

G**Estimated Loss Claim Is Approved by FSA or Modified by Lender**

If an estimated loss claim is submitted, it may be reviewed and approved separately from the liquidation plan. FSA shall respond in writing within 30 calendar days of the receipt of the lender's estimated loss claim. If FSA wishes to dispute the estimated loss claim, FSA will resolve their differences with the lender before this 30-calendar-day deadline. See subparagraph 359 F.

SED shall determine the level of review to be conducted on each estimated loss claim. Estimated loss claims submitted by PLP lenders will be reviewed only for the accuracy of RD-449-30 and any mathematical calculations. Lender's will reimburse FSA for any overpayments on estimated loss claims at the time of a final *--loss, plus interest, at the note rate.--*

H**Liquidate**

Liquidation is expected to be completed within 230 calendar days after the borrower was declared in default, unless otherwise approved in the liquidation plan.

I**Final Loss Claim Is Submitted**

Lenders may submit a final loss claim when the security has been liquidated and all proceeds have been received and applied to the account. See paragraph 360.

A final loss claim should be submitted within 30 calendar days of the completion of liquidation or within 260 calendar days after the borrower was declared in default, unless an extension of this period is granted. The Authorized Agency Official shall document the request for an extension and approve it or reject it as soon as practical.

The Authorized Agency Official shall monitor liquidations and request a loss claim when they are aware that an account has been liquidated. A final loss claim will be reduced if there are unjustified delays in liquidation or submission of a claim. If the account is paid in full, FSA-1980-44 and FSA-1980-41 shall be input indicating that the loan is paid and the guarantee terminated.

A**Mediation
Requirements**

When it has been determined that a default cannot be cured through any of the servicing options available or if the lender does not wish to utilize any of the authorities provided in this part, the lender must:

- C** participate in mediation according to the rules and regulations of any State which has a mandatory farmer-creditor mediation program
- C** consider private mediation services in those states which do not have a mandatory farmer-creditor mediation program
- C** not agree to any proposals to rewrite the terms of a guaranteed loan which do not comply with this part.

Any agreements reached as a result of mediation involving defaults and or loan restructuring must have written concurrence from the Agency before they are implemented.

If requested by the lender, FSA may participate in mediation to provide guidance on FSA regulations and guidelines. However, the FSA representative may not concur on any restructuring plans that require FSA approval during a mediation meeting. Restructuring plans developed during mediation that require FSA approval must be submitted to the local credit office according to Part 12.

Though not indicated in the liquidation time line, the mediation process should begin immediately following a lender's decision to liquidate a loan. If the borrower fails to attend the default meeting required by paragraph 300, or if this meeting does not result in a plan for restructuring, then the lender should notify the borrower of the results of the meeting and their intention to proceed with liquidation of the account. This notification should include an offer of mediation, an explanation of what mediation may accomplish, and instructions on how and where a mediation hearing may be requested. This information is available from FSA State Offices or the State Department of Agriculture of the State in which the borrower is located.

If SED determines that a lender's failure to participate in a mediation program caused a loss to the Government, a final loss claim payment may be reduced or denied. SEL lenders who consistently fail to participate in mediation may jeopardize consideration for CLP or PLP status.

357 Foreclosure and Acceleration (7 CFR 762.149)

A**Overview**

Once the lender has made the decision to liquidate a loan, the lender must initiate foreclosure action and accelerate the loan. The lender may not initiate foreclosure action on the loan until 60 calendar days after eligibility of the borrower to participate in the IA Programs has been established by FSA. The lender may accelerate the loan before FSA approval of a liquidation plan.

B**Borrower Files for Bankruptcy After Loan Note is Accelerated**

If the borrower files for bankruptcy after the loan note is accelerated, the lender suspends liquidation proceedings until 1 of the following actions:

- C bankruptcy case is dismissed or closed
 - C order lifting automatic stay is obtained from the court
 - C property is no longer property of bankruptcy estate and customer has been discharged (see Part 13).
-

C**Acceleration**

If the borrower is not in bankruptcy, the lender shall send the borrower notice that the loan is in default and the entire debt has been determined due and payable immediately after other servicing options have been exhausted. Foreclosure proceedings commence once a loan is accelerated.

The loan cannot be accelerated until after the borrower has been considered for Interest Assistance and the conclusion of mandatory mediation in accordance with § 762.149(a) (paragraph 356).

The lender will submit a copy of the acceleration notice or other document to the Agency.

Continued on the next page

C**Acceleration
(Continued)**

The lender accelerates a loan note by giving the borrower written notice via certified mail that the loan is in default and the entire debt is due and payable. The lender must make a copy of the acceleration notice and attach it to the first FSA-1980-44 that is submitted following note acceleration. Once a note is *--accelerated, the borrower will have typically 30 calendar days from the date--* of acceleration to make payment in full by cash, transfer, sale of property, or voluntary conveyance. If the borrower fails to satisfy the account in the * * * period specified in the notice, the foreclosure process will continue until the loan security is liquidated.

Once the note is accelerated all other servicing procedures other than liquidation and its associated actions, such as making protective advances, cease.

D**Foreclosure**

The lender is responsible for determining who the necessary parties are to any foreclosure action or who should be named on a deed of conveyance taken in lieu of foreclosure.

When the property is liquidated, the lender will apply the net proceeds to the guaranteed loan debt.

When it is necessary to enter a bid at a foreclosure sale, the lender may bid the amount that it determines is reasonable to protect its and the Agency's interest. At a minimum, the lender will bid the lesser of the net recovery value or the unpaid guaranteed loan balance.

Foreclosure refers to the comprehensive process of preparing for and selling the collateral that secures a loan that is being liquidated. Therefore, the foreclosure process begins once the lender decides to accelerate the loan in preparation for liquidation and ends once the loan's security is liquidated.

358 Lender Liquidation Plan (7 CFR 762.149(b))

A

Overview

Once the decision has been made to liquidate, the lender must submit a liquidation plan and, if applicable, a request for IA reimbursement to FSA within 30 calendar days. The liquidation plan must include a schedule of all projected liquidation activities, and a complete inventory of the security to be sold.

B

General**Requirements**

If a default cannot be cured after considering servicing options and mediation, the lender will proceed with liquidation of the collateral in accordance with the following.

***--For SEL's and ALP and CLP lenders, within 30 days of the decision to--* liquidate, all lenders will submit a written plan to the Agency which includes:**

- C a current balance sheet from all liable parties or, if the parties are not cooperative, the best information available, or in liquidation bankruptcies, a copy of the bankruptcy schedules or discharge notice**
- C a proposed method of maximizing the collection of debt which includes specific plans to collect any remaining loan balances on the guaranteed loan after loan collateral has been liquidated, including possibilities for judgment**
- C If the borrower has converted loan security, the lender will determine whether litigation is cost effective. The lender must address, in the liquidation plan, whether civil or criminal action will be pursued. If the lender does not pursue the recovery, the reason must be documented when an estimated loss claim is submitted (subparagraph 360 E).**
- C Any proposal to release the borrower from liability will be addressed in the liquidation plan in accordance with § 762.146(c)(2) (paragraph 361).**

***--Note:** If according to paragraph 361 the release of liability can be approved, it will not be granted until either all of the collateral is voluntarily conveyed to the lender or it is liquidated.--*

Continued on the next page

358 Lender Liquidation Plan (7 CFR 762.149(b)) (Continued)

B**General
Requirements
(Continued)**

- C** an independent appraisal report on all collateral securing the loan that meets the requirements of § 762.127 (paragraphs 181 through 183) and a calculation of the net recovery value of the security as defined in §762.102 (Exhibit 10). The appraisal requirement may be waived by the Agency in the following cases:
 - C** the bankruptcy trustee is handling the liquidation and the lender has submitted the trustee's determination of value
 - C** the lender's proposed method of liquidation rarely results in receipt of less than market value for livestock and used equipment
 - C** a purchase offer has already been received for more than the debt.
 - C** an estimate of time necessary to complete the liquidation
 - C** an estimated loss claim if the liquidation period is expected to exceed 90 days (paragraph 359)
 - C** an estimate of reasonable liquidation expenses
 - C** an estimate of any protective advances (paragraph 360).
-

C**Liquidation
Status Reports**

Lenders must submit FSA-1980-44 to the Authorized Agency Official every 60 calendar days during liquidation to report on the progress of liquidation. This report should provide information on the disposition of collateral, costs incurred, and specific actions taken by the lender or their representative since the previous FSA-1980-44 submission.

Details on future planned actions and their estimated dates, must be identified on FSA-1980-44. Further, any changes in the approved liquidation plan must also be identified on FSA-1980-44. The Authorized Agency Official shall input the loan status information on FSA-1980-44 into the Guaranteed Loan System and monitor lender compliance with the 60-calendar-day reporting cycle for any loan in default until payment of a final loss claim.

D**IA
Reimbursement**

IA payment will be conducted according to paragraph 228.

Continued on the next page

358 **Lender Liquidation Plan (7 CFR 762.149(b)) (Continued)**

E**Lender
Liquidation Plan
and Holders**

If the guaranteed portion of a loan undergoing liquidation was sold on the secondary market, see Part 15.

If the holder has not requested the lender to repurchase the guarantee but the lender determines that repurchase of the guarantee is necessary to adequately service the loan, the lender may repurchase the guaranteed portion of the loan from the holder, with the written approval of FSA. See Part 15 for information on the repurchase of loans sold on the secondary market and FSA approval of repurchase.

If the loan undergoing liquidation was sold on the secondary market and the unpaid guaranteed portion is still held by the holder at the time of liquidation plan submission, the liquidation plan must address the lender's plans to repurchase the guarantee. If the lender does not plan to repurchase the guarantee, the liquidation plan must include written notice from the holder certifying that the holder wishes to keep the guarantee during liquidation. If the lender plans to repurchase the guarantee, the date of planned repurchase must be noted in the liquidation plan along with a request for FSA concurrence on the repurchase.

F**FSA Approval of
Liquidation Plan**

[7 CFR 762.149(c)] CLP lender's or standard eligible lender's liquidation plan, and any revisions of the plan, must be approved by the Agency.

If, within 20 calendar days of the Agency's receipt of the liquidation plan, the Agency fails to approve it or fails to request that the lender make revisions, the lender may assume the plan is approved. The lender may then proceed to begin liquidation actions at its discretion as long as it has been at least 60 days since the borrower's eligibility for interest assistance was considered.

Upon receipt of the plan, FSA has 20 calendar days to respond in writing, either granting approval of the plan or requesting modification of the plan. The lender's liquidation plan must be submitted to the Authorized Agency Official. The Authorized Agency Official will receive the plan from the lender and notify the lender in writing of the decision to approve or request modification of the plan.

As part of a liquidation plan or a method for liquidation, the lender may propose to accept a deed from the borrower in lieu of a forced liquidation. The estimated loss claim will be based on the net recovery value of the property at the time the lender takes possession of it.

359 Lender Submission of Estimated Loss Claim (7 CFR 762.149)

A**Overview**

An estimated loss claim will be submitted by the lender with the liquidation plan if the liquidation is expected to exceed 90 days. The estimated loss will be based on the following:

- C** the Agency will pay the lender the guaranteed percentage of the total outstanding debt, less the net recovery value of the remaining security, less any unaccounted for security
- C** the lender will discontinue interest accrual on the defaulted loan at the time the estimated loss claim is paid by the Agency. If the lender estimates that there will be no loss after considering the costs of liquidation, interest accrual will cease after 90 days from the decision to liquidate or an estimated loss of zero will be submitted.

--See subparagraph 329 C for loss claims on restructured loans.--

B**Estimated
Liquidation
Expenses**

Certain reasonable costs to liquidate a loan may be included in the estimated loss claim. Eligible liquidation expenses include, but are not limited to, the following:

- C** appraisals
- C** marketing expenses
- C** auctioneer expenses.

In-house expenses are not allowable liquidation costs. In-house expenses include, but are not limited to, the following:

- C** employee salaries
 - C** staff lawyers
 - C** photocopying
 - C** travel.
-

Continued on the next page

359 Lender Submission of Estimated Loss Claim (7 CFR 762.149) (Continued)

C**Lender
Submission of
Estimated Loss
Claim**

Lenders will submit the estimated loss claim on RD-449-30 to the Authorized Agency Official and prepared according to the instructions attached to RD-449-30. Calculations and other documentation to support the figures and estimates used on RD-449-30 must be attached.

The lender must justify and explain any liquidation expenses on the estimated loss claim in a separate memo submitted with the estimated loss claim. RD-449-30 FMI provides an example of a completed estimated loss claim.

D**Unapproved
Loans or
Advances**

The amount of any payments made by the borrower on unapproved loans or advances outside of the guarantee will be deducted from any loss claim submitted by the lender on the guaranteed loan, if that loan or advance was paid prior, and to the detriment of, the guaranteed loan.

E**FSA Approval of
Protective
Advances**

FSA will approve a request for a protective advance if the request is reasonable and the value of the security would decrease significantly if the advance was not made. FSA will respond within 14 calendar days to an SEL and CLP written request for concurrence on a protective advance. Concurrence with protective advances can be provided separately from approval of the liquidation plan.

--PLP lenders will make protective advances according to FSA-1980-38.--

F**FSA Approval
and Payment of
Estimated Loss
Claim**

The estimated loss claim may be reviewed and approved separately from the liquidation plan using FSA-1980-06. The estimated loss claim is submitted on RD-449-30 to the Authorized Agency Official. After reviewing RD-449-30, the Authorized Agency Official shall forward RD-449-30 and supporting documentation to SED with a recommendation to approve or dispute the estimated loss claim. If SED finds the estimated loss claim to be accurate, SED shall approve the payment within 30 calendar days of estimated loss claim submission.

If FSA wishes to dispute the estimated loss claim, FSA shall attempt to resolve the differences with the lender within 30 calendar days of the submission. After approval by SED, SED shall forward RD-449-30 to the Finance Office for payment of the estimated loss claim. The Finance Office shall forward a check to the lender within 30 calendar days of receiving RD-449-30. The PLP-estimated loss will be paid after a brief review for accuracy.

359 Lender Submission of Estimated Loss Claim (7 CFR 762.149) (Continued)

G**Application of
Estimated Loss
Payment**

*** * *** The lender will discontinue interest accrual on the defaulted loan at the time the estimated loss claim is paid by the Agency. If the lender estimates that there will be no loss after considering the costs of liquidation, interest accrual will cease 90 days after the decision to liquidate or an estimated loss of zero will be submitted.

*--Interest may be paid in addition to the 90 calendar days allowed by this paragraph by the number of days the FSA review and approval of the claim extends beyond 30 calendar days when the delays were caused by FSA.

The estimated loss payment compensates the lender for the loss, but does not reduce the loan balance or cure a delinquency, and should not be reflected as such on FSA-1980-44.--*

360 Lender Submission of Final Loss Claim (7 CFR 762.149)

A**Overview**

Lenders may submit a final loss claim when the security has been liquidated and all proceeds have been received and applied to the account.

B**General
Requirements**

If a lender acquires title to property either through voluntary conveyance or foreclosure proceeding, the lender will submit a final loss claim after disposing of the property. The lender may pay reasonable maintenance expenses to protect the value of the property while it is owned by the lender. These may be paid as protective advances or deducted as liquidation expenses from the sales proceeds when the lender disposes of the property. The lender must obtain Agency written concurrence before incurring maintenance expenses which exceed the amounts allowed in § 762.149(e)(1) (subparagraph D).

The lender will make its records available to the Agency for the Agency's audit of the propriety of any loss payment.

The final loss claim will be based on the amount received from the sale of the property, less expenses incurred for its care and maintenance, assuming the lender has acted expeditiously and prudently to sell it.

Continued on the next page

360 Lender Submission of Final Loss Claim (7 CFR 762.149) (Continued)

C**Lender
Submission of
Final Loss Claim**

All lenders will submit the following documents with a final loss claim:

- an accounting of the use of loan funds**
- an accounting of the disposition of loan security and its proceeds**
- a copy of the loan ledger indicating loan advances, interest rate changes, protective advances, and application of payments, rental proceeds, and security proceeds, including a running outstanding balance total**
- documentation, as requested by the Agency, concerning the lender's compliance with the requirements of this part.**

The lender will designate one or more financial institutions to which any Agency payments will be made via electronic funds transfer.

--Lenders should also submit the EFT account number that is to be used for--*
transmission of any loss payment from the Government.

The lender must justify and explain protective advances in a separate cover memo submitted with the final loss claim.

D**Protective
Advances**

Protective advances are expenses incurred by a lender to protect or preserve collateral from loss or deterioration. Protective advances should be shown on RD-449-30.

Prior written authorization from the Agency is required for all protective advances in excess of \$5,000 for CLP lenders, \$3,000 for standard eligible lenders. The dollar amount of protective advances for PLP lenders will be specified when PLP status is awarded by the Agency or as contained in the Lender's Agreement.

--Prior FSA written authorization of protective advances in excess of \$5,000 is required for PLP lenders with lender's agreements that provide that protective advances will be handled according to the provisions of 2-FLP.--*

The lender may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances allowed in this part, plus interest that accrues on the protective advances.

--Interest that accrues on protective advances is limited to the guaranteed loan interest accrual cutoff if the protective advance is used to pay off the lender's prior lien.--*

D**Protective
Advances
(Continued)**

Payment for protective advances is made by the Agency when the final loss claim is approved, except in bankruptcy actions.

Protective advances are used only when the borrower is in liquidation, liquidation is imminent, or when the lender has taken title to real property in a liquidation action.

Legal fees are not a protective advance.

***--Note:** Legal fees associated with the liquidation are a liquidation expense. FSA allows reasonable and necessary legal fees, including fees incurred in a Chapter 7 liquidation bankruptcy, to be deducted from the proceeds from the sale of the collateral before application of the net proceeds to the guaranteed debt. An estimate of legal fees, and all liquidation costs, required must be provided with an estimated claim, and documentation of actual expenses incurred must be provided with a final claim.--*

Protective advances may only be made when the lender can demonstrate the advance is in the best interest of the lender and the Government.

Protective advances must constitute a debt of the borrower to the lender and be secured by the security instrument.

Protective advances must not be made in lieu of additional loans.

Protective advances approved by FSA may be made by a lender to protect or preserve the collateral from loss or deterioration. Additional loans made to improve the value of security, such as loans for home improvement, are not protective advances and should not be approved. Protective advances and the interest that accrues on the advances are covered by the guarantee.

E**FSA Approval
and Payment of
Final Loss Claim**

The Agency will notify the lender of any discrepancies in the final loss claim or, approve or reject the claim within 40 days. FSA officials may use FSA-1980-07 for this discrepancy review.

The Agency will reduce a final loss claim based on its calculation of the dollar amount of loss caused by the lender's negligent servicing of the account. Loss claims may be reduced or rejected as a result of the following:

- C a loss claim may be reduced by the amount caused by the lender's failure to secure property after a default, and will be reduced by the amount of interest that accrues when the lender fails to contact the borrower or takes no action to cure the default, once it occurs**

E

FSA Approval and Payment of Final Loss Claim (Continued)

- C** losses incurred as a result of interest accrual during excessive delays in collection, as determined by the Agency, will not be paid
- C** unauthorized release of security proceeds, failure to verify ownership or possession of security to be purchased, or failure to inspect collateral as often as required to ensure its maintenance.

Losses will not be reduced for the following:

- C** servicing deficiencies that did not contribute materially to the dollar amount of the loss
- C** unaccounted for security, as long as the lender's efforts to locate and recover the missing collateral was equal to that which would have been expended in the case of an unguaranteed loan in the lender's portfolio.

Default interest, late charges, and loan servicing fees are not payable under the loss claim.

The final loss will be the remaining outstanding balance after application of the estimated loss payment and the application of proceeds from the liquidation of the security. The lender will designate one or more financial institutions to which any Agency payments will be made via electronic funds transfer.

FSA shall pay the lender the guaranteed percentage of the unpaid balance remaining on the loan after liquidation and application of proceeds. To verify that the amount requested is valid, SED shall review the County Office loan file, the lender's loan ledgers, and, for PLP, the lender's loan file. If there are any discrepancies in the lender's application processing or loan servicing, the lender will be requested to provide clarification or explanation if the concern may have contributed to failure of the loan or caused a monetary loss. If security was not obtained as indicated on the application, the value will be deducted from the lender's claim, if that value is known or can be reasonably estimated. In the case of unaccounted for security that was not sold, traded, or explained in some manner, the value of the collateral will be deducted only to the extent that the actions of the lender contributed to its misplacement.

Examples: Examples may include unauthorized release of security proceeds, failure to verify ownership or possession of security to be purchased, or failure to inspect collateral so often as to ensure its maintenance.

Continued on the next page

E**FSA Approval
and Payment of
Final Loss Claim
(Continued)**

Interest accrual on a final loss should be the same as on the estimated loss except *--for the amount that accrued while the payment was being issued. If liquidation was completed as planned and the claim was timely submitted to FSA, additional interest may be paid for the number of calendar days over 40 that FSA took to review the claim up to the date of the check. If an estimated loss was not paid,--* SED shall determine whether the lender has liquidated the account in a timely manner. If liquidation was unduly delayed or the lender did not comply with the reporting requirements of this part, interest accrual will be included on the claim to the date that SED determines that liquidation should have reasonably been accomplished.

*--Interest accrual as part of a lender's final loss claim will never exceed 90 calendar days from the date of the decision to liquidate, plus any additional days over 40 calendar days that it took FSA to review the claim up to the date of the check, for all claims made after February 12, 1999, in which an estimated claim was not filed and the final claim was submitted within 90 calendar days of the date of the decision to liquidate.

If an estimated claim was not submitted and the final claim was submitted beyond 90 calendar days of the date of the decision to liquidate, interest accrual will not be paid beyond 90 calendar days from the date of the decision to liquidate for all claims made after February 12, 1999.

Interest accrual as part of a final claim will be the same as the estimated claim for all final claims in which an estimated claim was previously submitted.--*

FSA may pay a loss when a borrower sells security out of trust. If the borrower has converted loan security, the lender shall determine whether litigation is cost-effective. The lender must determine whether civil or criminal action is cost-effective and will be pursued. If the lender does not pursue the recovery, the reason must be documented when a loss claim is submitted. If recovery of converted security through legal action is possible, a lender may still submit a final loss claim and reimburse FSA according to subparagraph 362 A after proceeds are collected.

If a lender's loss claim is denied or reduced, SED shall notify the lender in writing immediately of the decision. Lenders may appeal this decision according to 1-APP.

When the final RD-449-30 is accepted by the Authorized Agency Official and approved by SED, SED shall forward RD-449-30 to the Finance Office for *--payment. The final loss claim will be paid up to the maximum amount allowed as provided in subparagraph 195 C. In the case of a loan that is a total loss, the loss payment may exceed the original guaranteed principal and accrued interest, if it includes emergency advances or protective advances.--*

Continued on the next page

360 Lender Submission of Final Loss Claim (7 CFR 762.149) (Continued)

F**Overpayment**

If the final loss is less than the estimated loss, the lender will reimburse the Agency for the overpayment plus interest at the note rate from the date of the estimated loss payment.

*--The lender's ledger provided with the final loss claim should reflect that since the estimated claim was paid, the following has occurred:

- C application of liquidation proceeds net of expenses
- C approved protective advances
- C any voluntary payments
- C no additional interest accrual except on protective advances.

The ledger should not reflect that the FSA-estimated loss claim was applied as a regular payment. The amount of overpayment or underpayment will be calculated on RD-449-30. The interest due on any loss claim will be calculated by the St. Louis Finance Office based upon the borrower's rate of interest and the date the estimated claim was paid. If the lender wishes to submit a check with their request for a final loss claim, this amount may be obtained by contacting the St. Louis Finance Office technician before submitting RD-449-30.--*

G**Return of
Guarantee**

The lender will return the original Guarantee marked paid after receipt of a final loss claim.

--The final loss claim payment will be sent by EFT whenever possible. Return of the Guarantee is not required before EFT or delivery of a check. After verification that the final loss claim has been paid, the account will be terminated in GLS.--

361 Release of Liability After Liquidation (7 CFR 762.146(c))

A**Overview**

After a final loss claim has been paid, the lender can release the borrower or any guarantor from liability with FSA concurrence. The lender will decide whether or not to seek release of liability for a borrower or entity based on an assessment of the value of any income or assets to offset FSA or lender losses.

Continued on the next page

361 Release of Liability After Liquidation (7 CFR 762.146(c)) (Continued)

B**General
Requirements**

After a final loss claim has been paid on the borrower's account, the lender may release the borrower or guarantor from liability if:

- C** the Agency agrees to the release in writing
- C** the lender documents its consideration of the following factors concerning the borrower or guarantors:
 - C** the likelihood that the borrower or guarantor will have a sufficient level of income in the reasonably near future to contribute to a meaningful reduction of the debt
 - C** the prospect that the borrower or guarantor will inherit assets in the near term that may be attached by the Agency for payment of a significant portion of the debt
 - C** whether collateral has been properly accounted for, and whether liability should be retained in order to take action against the borrower or a third party for conversion of security property
 - C** the availability of other income or assets which are not security
 - C** the possibility that assets have been concealed or improperly transferred
 - C** the effect of other guarantors on the loan
 - C** cash consideration or other collateral in exchange for the release of liability.

The lender will execute its own release of liability documents.

C**FSA Approval of
Release of
Liability After
Liquidation**

The lender will submit a narrative to the Authorized Agency Official explaining the borrower or entity should be released from liability. The Authorized Agency Official may ask for documentation to support the lender's argument. The Authorized Agency Official will forward all relevant material to SED for review and approval.

A**Future Recovery**

The lender will remit any recoveries made on the account after the Agency's payment of a final loss claim to the Agency in proportion to the percentage of guarantee in accordance with the Lender's Agreement until the account is paid in full or otherwise satisfied.

A lender receiving a loss payment must complete and return in a timely manner a report on its collection activities, FSA-1980-26, for each unsatisfied account for three years following payment of loss claims.

In late October of each year, the Authorized Agency Official will forward FSA-1980-26 with instructions to lenders who have received a loss claim because of liquidation in the past 3 years. FSA-1980-26 must be completed and returned by November 30. SED shall compile the State's reports and submit the results to the National Office upon request.

--When FSA's share of an amount is received, the funds will be deposited and RD-449-30 will be completed and submitted according to the FMI.--

B**FSA Option to Liquidate**

At its option, the Agency may liquidate the guaranteed loan as follows.

- C Upon Agency request, the lender will transfer to the Agency all rights and interests necessary to allow the Agency to liquidate the loan. The Agency will not pay the lender for any loss until after the collateral is liquidated and the final loss is determined.**
- C If the Agency conducts the liquidation, interest accrual will cease on the date the Agency notifies the lender in writing that it assumes responsibility for the liquidation.**

Upon the recommendation of SED, DAFLP may approve liquidation of a guaranteed loan by FSA.

The lender will transfer to FSA all rights and interest necessary to allow the Authorized Agency Official to liquidate the loan.

Continued on the next page

362 Miscellaneous Liquidation Items (7 CFR 762.149) (Continued)

B**FSA Option to
Liquidate
(Continued)**

SED shall consult with OGC to answer questions relating to the assignment and transfer of the lender's loan documents to FSA. After the loan is transferred, the Authorized Agency Official shall summarize the history of case, list all of the loan security and its estimated value, and address any other issues that SED or OGC have regarding the liquidation. SED shall refer the case to OGC to process the request for liquidation by the Government. SED shall send FSA-1980-45 to the Finance Office, and the Authorized Agency Official shall oversee the liquidation. If requested by the lender, FSA shall provide an update on the liquidation proceedings. Interest accrual will stop when FSA notifies the lender in writing that FSA is assuming responsibility of the liquidation process. The final loss payment to the lender will not include interest beyond the date FSA took responsibility to liquidate. In this event, the lender is not paid for any loss until the collateral is liquidated and the final loss is determined.

363-372 (Reserved)

